

Advisory Opinion

MEAC 2011-013

Mediator Ethics Advisory Committee

c/o Florida DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

October 19, 2011

The Question:

In a small claims mediation, one party is represented by an attorney who purports to have settlement authority and whose client is not physically present. The other party is pro se. During the negotiations, the attorney claims that while the offer on the table might be acceptable, he will need to call his client to see how the client feels about the offer. The pro se party objects to the call.

Does the mediator have the right to tell the attorney to call? Could the mediator suggest to the attorney that he can go outside the room to call?

Certified County Mediator
Central Division

Authorities Referenced

Rules, 10.310(a), 10.330(a), 10.360(a), 10.520, 10.620, Florida Rules for Certified and Court-Appointed Mediators

Rule 7.090(f), Florida Small Claims Rule

MEAC Opinions 2000-005, 2006-007, 2007-002, 2008-006, 2010-014

Summary

A certified mediator does not have the authority to direct or suggest to an attorney, acting as a party representative in a small claims case, to make a phone call over the objection of the physically present named party.

Opinion

In accordance with Rule 7.090(f), Florida Small Claims Rules, “an attorney may appear on behalf of a party at mediation if the attorney has full authority to settle **without further consultation**” [emphasis added]. In this example, the attorney has appeared without the requisite authority. Therefore under the Rule, coupled with the applicability of self-determination and confidentiality, the attorney cannot call the client without the consent of the pro se party. This is true irrespective of whether the call would be made inside or outside the room where the

mediation conference is being held.

As a best practice and in order to facilitate settlement, the mediator may discuss with the objecting party the benefits and drawbacks of allowing the communication, but the objecting party should not have undue pressure exerted without the mediator's violating the principle of self-determination. The attendance of a participant to whom a party objects has been addressed in MEAC Opinions 2010-014, 2008-006, and 2006-007.

Date

Beth Greenfield-Mandler, Committee Chair